

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ATIYA D. GARNER,

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Plaintiff,

*

vs.

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AUDREY G. MARSHALL LUNDBERG,
ELIZABETH A. GEORGE, and UNITED
STATES OF AMERICA,

*

CASE NO. 4:17-CV-182 (CDL)

*

Defendants.

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O R D E R

Plaintiff Atiya Garner brought this action in the Superior Court of Muscogee County against Defendants Audrey G. Marshall Lundberg and Elizabeth A. George. Garner alleges that Marshall and George, both doctors, committed medical malpractice and injured her. Both Lundberg and George are federal employees of Martin Army Community Hospital. After Defendants removed the action to this Court, the United States of America certified that Lundberg and George were acting in the scope of their employment at the time of the incident giving rise to this action. Notice of Substitution, ECF No. 2. Based on that certification, the United States has been substituted as the Defendant in this action under 28 U.S.C. § 2679(d).

Presently pending before the Court is the Government's motion to dismiss (ECF No. 3). Under the law, Garner "shall

not" bring an action against the United States until she first presents "the claim to the appropriate Federal agency" and her claim is "finally denied by the agency in writing and sent by certified or registered mail." 28 U.S.C. § 2675(a). Although Garner has filed a claim with the Department of the Army, that claim is still pending, and Garner has not received a final denial of the claim. Therefore, as Garner acknowledges, Garner has not exhausted her administrative remedies as required by the law. The Court thus concludes that it lacks jurisdiction to entertain this action. See *McNeil v. United States*, 508 U.S. 106, 113 (1993) (affirming dismissal of Federal Tort Claims Act case for failure to exhaust administrative remedies). Accordingly, the Government's motion to dismiss (ECF No. 3) is granted, and Garner's claims are dismissed without prejudice.

IT IS SO ORDERED, this 2nd day of October, 2017.

S/Clay D. Land

CLAY D. LAND

CHIEF U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA